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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,034	03/21/2000	Jay H. Connelly	042390.P8388	6937
7590	09/07/2004			EXAMINER BLAIR, DOUGLAS B
James Y Go Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard Seventh Floor Los Angeles, CA 90025-1026			ART UNIT 2142	PAPER NUMBER

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/532,034	CONNELLY, JAY H.
	<b>Examiner</b> Douglas B Blair	<b>Art Unit</b> 2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 May 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-8,10-12,14-19 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-8,10-12,14-19 and 21-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) ✓  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/24/2004 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-8, 10-12, 14-19, and 21-32 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,088,722 to Herz et al..

Herz teaches the invention as claimed (As in exemplary claim 28) including a system comprising: a broadcast system; and one or more client systems coupled to the broadcast system; wherein the broadcast system is coupled to broadcast meta-data to a plurality of client systems, the meta-data including sets of descriptors and/or attributes describing respective pieces of broadcast programming content from among a plurality of pieces of broadcast programming content up for consideration to be included in a future, yet to be scheduled, broadcast (col. 12,

lines 26-48 and col. 14, lines 24-64); wherein the plurality of client systems are coupled to rate in response to a content rating table one or more of the plurality of pieces of broadcast programming content described by the meta-data, the content rating table generated using the meta-data and containing ratings derived from observations of data pieces of broadcast programming content having similar descriptors and/or attributes to the descriptors and/or attributes included in the meta-data that have been previously accessed via that client system (col. 12, lines 26-48 and col. 14, lines 24-64); wherein the one or more client systems are coupled to transmit to the broadcast system the ratings of the plurality of pieces of broadcast programming content (col. 14, lines 17-23); wherein the broadcast system is coupled to select a portion of the plurality of pieces of broadcast programming content in response to the ratings received for the plurality of client systems (col. 22, line 64-col. 23, line 38); and wherein the broadcast system is further coupled to broadcast the selected portion of the plurality of pieces of broadcast programming content (col. 22, line 64-col. 23, line 38).

As to claims 2, 15, and 25, Herz teaches a machine readable medium and method wherein the selected portion of the plurality of pieces of broadcast programming content that are broadcast are pieces of broadcast programming content having higher content ratings than a remaining portion of pieces of broadcast content that are not selected (col. 22, line 64-col. 23, line 38).

As to claims 4, 12, 16, and 23, Herz teaches a system able to receive a broadcast schedule of the second plurality of pieces of broadcast programming content prior to selectively receiving the portion of the second plurality of pieces of broadcast programming content (col. 47, lines 9-30).

As to claims 5 and 17, Herz teaches a system able to broadcast a broadcast schedule of the meta-data prior to broadcasting the meta-data to the plurality of client systems (col. 47, lines 9-30).

As to claim 6, Herz teaches a method wherein broadcasting the selected portion of the plurality of pieces of broadcast programming content to the plurality of client systems comprises broadcasting one of the plurality of pieces of broadcast programming content having a higher rating prior to broadcasting one of the plurality of pieces of broadcast programming content having a lower rating (col. 22, line 64-col. 23, line 38).

As to claims 8, 11, 19, 22, and 27, Herz teaches receiving a meta-data broadcast schedule broadcast by the server system, the client system activated in response to the meta-data broadcast schedule (col. 47, lines 9-30).

As to claims 29-32, Herz teaches a system wherein each of the plurality client systems is coupled to selectively receive and store a portion of the selected portion of the plurality of pieces of broadcast programming content in response to a content rating table associated with each respective one of the plurality of client systems (col. 47, lines 9-30).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 703-305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Blair

DBB



JACK B. HARVEY  
SUPERVISORY PATENT EXAMINER